IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

..

:: JUDGMENT ::

Smt.Bindu Rai & Ors. Vs. Shanti Lal & Ors.

S.B.CIVIL MISC. APPEAL NO.159/1994

Against the award dated 17.03.1993 made by the Motor Accidents Claims Tribunal No.2 Udaipur in Claim Case No.87/1991.

Date of Judgment ::: 12.10.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Ganga Ram Bhari for
Mr. Sanjay Mathur, for the appellants.
Mr .B.S.Bhati, for the respondent-insurer.

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BY THE COURT:

This is claimants' appeal seeking enhancement over the amount of Rs.1,90,000/- awarded by the Motor Accidents Claims Tribunal No.2 Udaipur in its award dated 17.03.1993 made in Claim Case No.87/1991 on account of accidental death of Narendra Pratap Rai (about 33 years), husband of appellant No.1 and father of appellant Nos.2 and 3.

On 29.09.1991 the deceased Narendra Pratap Rai with his father Lal Bihari Rai, mother Smt.Chandra Jyoti and other relatives was travelling in a Maruti car bearing registration No.RJ 14 2293 on Udaipur-Banswara Road towards Salumbar; near Mahudi, an on-coming jeep bearing registration No.RJ 27 1999 driven by non-applicant No.1 belonging to non-applicant No.2 and insured with non-applicant No.3 hit the said Maurti car causing injuries to its occupants. Smt.Chandra Jyoti succumbed on the spot while Narendra Pratap Rai and his father Lal Bihari Rai died in hospital due to the injuries sustained in the accident.

The present appellants, wife and children of Narendra Pratap Rai claimed compensation stating that the incident aforesaid was caused by rash and negligent driving of the jeep. For quantification of compensation, the claimants alleged that the deceased was 32 years in age, was engaged in hotel and liquor business and was also earning by way of agriculture and his total income was about Rs.7,000/- per month and he was contributing to the claimants about Rs.5,000/- per month. The claimants also claimed compensation towards non-pecuniary losses, funeral expenses and property damage. The non-applicants contested the claim, inter alia, on the ground that the accident

occurred for the fault and negligence of the Maruti car driver. On the pleadings of the parties, following issues were framed by the Tribunal:

> "1- आया दिनांक 29.9.91 को विपक्षी नम्बर-1 शान्तिलाल द्वारा वाहन संख्या आर.जे.27/1999 को गफलत व लापरवाही से चलाने के कारण श्री नरेन्द्रप्रताप राय की मृत्यु हुई?
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> 2- आया प्रार्थी क्लेम में बताई गई राशि रूपया 42,50,000/- या अन्य कोई राशि प्रतिकार में विपक्षीगण से पाने का अधिकारी है? यदि हाँ तो कितनी व किस-किससे ?
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> 3- आया बीमा कम्पनी द्वारा जवाब दावे में उठाई गई आपत्तियों के आधार पर बीमा कम्पनी का कोई दायित्व नहीं है?
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> 4- दादरसी ।"

In evidence, only the claimant No.1 was examined as AW-1 and she produced certain photostat of police investigation papers, registration certificate of the vehicles involved in the accident and the insurance certificate of the jeep in question that have been marked as Ex.1 to Ex. 9.

After hearing the parties, the Tribunal decided in issue No.1 that the accident occurred for rash and negligent driving of the jeep and in issue No.3 held that non-applicant-insurer was liable for making payment of compensation. Only

quantum of compensation being the subject matter of this appeal, findings on issues Nos.1 and 3 need no further dilatation.

While taking up quantification of compensation in issue No.2 the Tribunal referred to the agony and sufferings of the claimants and the misfortune befallen them and likelihood of the deceased having contributed to them but then allowed Rs.35,000/- to each of the children and another Rs.1,20,000/- to the wife of the deceased as lump sum towards compensation and allowed interest at the rate of 12% per annum from the date of filing of claim application.

The award so made by the Tribunal has been assailed in the present appeal by the claimants with the submissions that the award on its quantification of compensation remains too low and grossly inadequate; that the deceased was engaged in hotel and liquor business and so also in agriculture and there being no rebuttal to the evidence led by the claimants, the Tribunal ought to have assessed the loss on the basis of the income of the deceased as asserted by the claimants and ought to have also awarded reasonable amount towards non-pecuniary loss particularly in view of the fact that the claimants have practically been rendered supportless with

the death of the victims Narendra Pratap Rai and his parents in the same accident. On behalf of the insurer, the impugned award has been duly supported with the submissions that no documentary evidence whatsoever having been produced by the claimants, the amount awarded by the Tribunal cannot be said to be too low or grossly inadequate; that of course the Tribunal has made award in lump sum for the three claimants but the ultimate amount allowed by the Tribunal remains that of just compensation and the Tribunal has further allowed higher rate of interest at 12% per annum.

Having given a thoughtful consideration to the rival submissions and having examined the impugned award, this Court is clearly of opinion that the award on its quantification of compensation remains too low and insufficient and deserves suitable modification. The approach of the learned Tribunal in carving out sympathetic phraseology for the loss suffered by the claimants, misfortune befalling them and their agony and sufferings and then simply making the award in lump sum cannot be appreciated. This Court is clearly of opinion that in a vehicular accident case, it is the quantum of compensation that ought to be determined; and determined on some rationale and on some principle; instead of merely commiserating with the claimants and then picking up at

random some figure as lump sum compensation.

It is true that the claimants have not produced any documentary evidence to establish the business income of the deceased and so also his income from other sources. It is also noticed from the record of the claim case that the claimants have not even produced certified copies of all the police investigation papers and certain papers produced are simple photo copies like those of registration certificate of the vehicles and the insurance cover note; and some of the papers like post mortem report have been produced as certified correct by the concerned police station. The family having been suddenly deprived of three of its senior members obviously appears to be in a traumatic condition and the claimants, wife and minor children of the deceased have not been able to even support their claim application properly. Despite asserting existence of hotel business in the name of her husband and his being an income-tax assessee and being engaged in liquor contract in partnership, no document has been produced to establish the quantum of income and the sources of income. In the given set of facts, may be the assertion of income as made by the claimants be not accepted, but then, fact remains that the deceased has been shown engaged in a hotel business and there is no

rebuttal of such fact. The wife of the deceased in her deposition has stated about the source of the income of deceased from the business in the name of Hotel Chandra Lok. Though the Maruti car in question has been alleged belonging to the deceased but its registration certificate Ex.9 shows that the same was belonging to the said Hotel Chandra Lok. There appears no reason to disbelieve the case of the claimants that deceased was engaged in hotel business and that deceased and his parents were partners in the said business.

The claimant wife of the deceased has asserted that her husband was contributing Rs.5,000/- per month to the family after deducting Rs.2,000/- per month on his personal expenditure. The wife of deceased has also asserted that hotel business was being continued but two managers were required to be deployed on salary of Rs.2,500/- per month. In the present case, it is not in dispute that the deceased was about 33 years in age and had the family inclusive of his wife and two children. When no other source of income of the claimants has been shown, obviously the deceased was earning and maintaining the claimants. Even if it is considered that the hotel business left by the deceased remains available to the claimants and, therefore, there has not been total loss of

income, yet the component of loss because of erosion of the income earned by the efforts of the deceased cannot be ignored.

Having regard to the overall facts and circumstances of the case, this Court is of opinion that the amount towards just compensation in the present case could be arrived at thus: Even if the deceased be taken to be earning mere Rs.2,400/- per month and one-third be deducted on his personal expenditure, yet the loss of dependency suffered by the claimants stands at Rs.1,600/- per month. Other way round, even if it be assumed that the entire hotel business retains itself to the claimants and the assertion of the claimant No.1 of deploying other personnel for managing the business on salary is taken into consideration, in the circumstances of the case, an amount of Rs.1,600/- per month to be paid to the managers of the business cannot be ruled out. Viewed from any angle, the loss for claimants deserves to be considered minimum at Rs.1,600/- per month in the present case leading to a multiplicand of Rs.19,200/- per annum. Though the deceased has been shown in the age of about 33 years, but in the circumstances of the case, it appears appropriate to apply multiplier of 15 only and even on this basis, pecuniary loss itself stands in the sum of Rs.2,88,000/-

(19,200 x 15). The wife of the deceased may be allowed further Rs.10,000/- towards loss of consortium and the children of the deceased may be allowed Rs.5,000/- each towards loss of love, affection and company of their father. Another sum of Rs.2,000/- may be allowed towards funeral expenses. In this manner, the claimants are entitled for compensation in the sum of Rs.3,10,000/- (Rs.2,88,000/- + Rs.10,000/- + 10,000+ Rs.2,000/-) even on a conservative estimate and there appears no reason to deny this much of the minimum compensation to the claimants. The amount of Rs.1,90,000/- awarded by the Tribunal to the claimants obviously falls much short of the amount of just compensation.

The claimants are held entitled for compensation in the sum of Rs.3,10,000/- and hence they shall be entitled for an amount of Rs.1,20,000/- over and above the amount of Rs.1,90,000/- awarded by the Tribunal. In view of substantial enhancement being made herein and in the overall circumstances, it is considered appropriate to allow interest on the enhanced amount at the rate of 6% per annum from the date of filing of claim application.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The claimants are allowed compensation in the

sum of Rs.3,10,000/- in place of the amount of Rs.1,90,000/- awarded by the Tribunal. The claimants shall, therefore, be entitled for a further amount of Rs.1,20,000/- and shall be entitled on this enhanced amount interest at the rate of 6% per annum from the date of filing of claim application.

The amount payable under the modified award shall be deposited by the respondent-insurer within 30 days from today with the Tribunal and it shall be required of the Tribunal to carry out its appropriate apportionment and disbursement amongst the claimants. There shall be no order as to costs of this appeal.

(DINESH MAHESHWARI),J.

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